In the Office Action mailed from the United States Patent and Trademark Office on May 11, 2009, the Examiner rejected claims 1-5, 8-9, 14-21, 23, 25, 27-29, 31, 33-34, 39-43, 47-48, 50-52, 58-59, 61-63, 65, and 67-69 under 35 U.S.C. 103(a) as being unpatentable over Krebs (United States Patent No. 7,029,280, hereinafter "Krebs") in view of Parry et al (United States Patent No. 6,077,085, hereinafter "Parry") and further in view of Turner (United States Patent No. 6,633,742, hereinafter "Turner), rejected claims 12, 53-55 and 57 under 35 U.S.C. 103(a) as being unpatentable over Krebs in view of Parry in view of Turner and further in view of Rukavina et al (United States Patent Application Publication No. 2002/0188583, hereinafter "Rukavina"), rejected claim 22 under 35 U.S.C. 103(a) as being unpatentable over Krebs in view of Parry in view of Turner and further in view of Jensen (United States Patent No. 6,834,276, hereinafter "Jensen"), rejected claims 24, 26, 60 and 70 under 35 U.S.C. 103(a) as being unpatentable over Krebs in view of Parry and further in view of Turner and further in view of Kershaw et al (United States Patent No. 5,565,316, hereinafter "Kershaw"), rejected claims 30 and 49 under 35 U.S.C. 103(a) as being unpatentable over Krebs in view of Parry and further in view of Turner and further in view of Jenkins et al (United States Patent No. 6,293,801, hereinafter "Jenkins"), rejected claim 32 under 35 U.S.C. 103(a) as being unpatentable over Krebs in view of Parry in view of Turner and further in view of Strub et al (United States Patent No. 6,652,287, hereinafter "Strub"), and rejected claims 35-36 and 44-46 under 35 U.S.C. 103(a) as being unpatentable over Krebs in view of Parry in view of Turner and further in view of Siefert (United States Patent No. 5,810,605, hereinafter "Siefert").

Applicant expresses appreciation for the Examiner's Interview conducted on September 10, 2009. As presented in the Examiner's Interview, Applicant respectfully submits that that

references cited by the Examiner do not teach or suggest all of the limitations claimed in the claim set as provided herein.

M.P.E.P. § 2141 sets forth the *Graham* factual enquiries that should be considered when making an obviousness rejection under Section 103: 1) ascertaining the scope and content of the prior art; 2) ascertaining the differences between the claimed invention and the prior art; and 3) resolving the level of ordinary skill in the pertinent art. (Citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).) In addition, M.P.E.P. §§ 2141 and 2142 set forth that "the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." (Citing *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. ___, 82 USPQ2d 1385 (2007).)

For a rejection under Section 103 to stand, it must explicitly set forth 1) factual findings showing that each claim element was known in the art at the time of the invention, and 2) factual findings showing that one of ordinary skill in the art, at the time of the invention, would have found it obvious to modify or combine the teachings to arrive at the claimed invention. (See, for example, the enumerated required articulations set forth in M.P.E.P. §2143 for each lettered rationale.)

Applicant respectfully submits that the references cited in the Office Action, either alone or in combination, do not teach or suggest all the limitations claimed in the claim set provided herein. For example, none of the cited references (alone or in combination) teach or suggest the customizing of the educational path as claimed in the independent base claims. As identified in the Examiner's Interview, the Examiners agreed that the Kreb and Turner references do not provide a teaching of the customizing of the educational path as claimed. (See Examiner's Interview Summary.) Applicant also respectfully submits that neither the Parry reference nor any of the other reference cited by the Examiner (alone or in combination) teaches the

customizing of the educational path as claimed in the independent base claims, and for at least this reason the cited references do not make obvious the claims as provided herein.

Independent base claim 1, which is supported by the present application as originally, specifically recites "...using a computer processor and a computer readable medium encoded with object oriented computer executable code to automatically and adaptively customize the educational path to an educational performance of the particular learner, wherein the customizing of the educational path to the educational performance of the particular learner comprises:

using the learner performance data that was obtained and analyzed by the computer system to identify which portions of the educational content are to be presented to the particular learner, wherein the identified portions include a type and difficulty of the educational content that is to be selectively presented to the particular learner;

using the learner performance data that was obtained and analyzed by the computer system to selectively determine a frequency of exposure of the identified portions of the educational content to the particular learner;

using the learner performance data that was obtained and analyzed by the computer system to identify which of the object oriented educational activities are to be presented to the particular learner;

selectively matching the identified portions of the educational content with identified educational activities for presentation to the particular learner; and

selectively sequencing the individually matched educational content and corresponding educational activities for presentation to the particular learner based upon the learner performance data that was obtained and analyzed by the computer system, wherein the sequencing comprises modifying the presentation order of the individually

matched educational content and corresponding educational activities based upon the learner performance data that was obtained and analyzed…".

In contrast, Parry teaches of a working group that consists of all the items that are currently being presented to the student by the program for review. (Col. 15, lines 37-40) As items are successfully reviewed and leave the working group, new items take their place from a current pool, so that the number of items in the working group remains constant. (Col. 15, lines 40-43) When a student responds to a question about an item Parry will progress that item to a more advanced pool for future review, hold that item in the present working pool for further study during the present session, or regress the item to a previous pool for study in a less advanced activity. (Col. 15, lines 58-63) In this way Parry sorts the items into different pools. (Col. 15, lines 63-64) After every response from the student, Parry determines whether the item to which the student just responded is ready to leave the working group. (Col. 15, lines 64-66) To determine whether the item is ready for advancement, many criteria may be taken into account. (Col. 16, lines 8-9) All of these factors depend only on the student's performance in the current review session, for the item in question. (Col. 16, lines 15-18) In other words, only questions since the formation of the current working group are taken into account. (Col. 16, lines 18-19)

Parry does not teach using a computer processor and a computer readable medium encoded with object oriented computer executable code to automatically and adaptively customize the educational path to an educational performance of the particular learner as claimed. Neither do any of the other cited references (alone or in combination) teach or suggest using a computer processor and a computer readable medium encoded with object oriented

computer executable code to automatically and adaptively customize the educational path to an educational performance of the particular learner as claimed.

For at least this reason, Applicant respectfully submits that the references cited in the Office Action, alone or in combination, do not teach or suggest all the claim limitations of independent claim 1. And, since the references cited in the Office Action do not teach or suggest each and every limitation of independent claim 1, Applicant respectfully submits that the prior art references do not make obvious independent claim 1. And since the prior art references do not make obvious independent claim 1, Applicant respectfully submits that the prior art references cited in the Office Action do not make obvious the corresponding dependent claims, which depend from independent claims 1.

Similarly, Applicant respectfully submits that independent claims 50, 58, and 61 include limitations relating to using the learner performance data that was obtained and analyzed by the computer system to identify which portions of the educational content are to be presented to the particular learner, wherein the identified portions include a type and difficulty of the educational content that is to be selectively presented to the particular learner; using the learner performance data that was obtained and analyzed by the computer system to selectively determine a frequency of exposure of the identified portions of the educational content to the particular learner; using the learner performance data that was obtained and analyzed by the computer system to identify which of the object oriented educational activities are to be presented to the particular learner; selectively matching the identified portions of the educational content with identified educational activities for presentation to the particular learner; and selectively sequencing the individually matched educational content and corresponding educational activities for presentation to the particular learner based upon the learner performance data that was obtained and analyzed by the

computer system, wherein the sequencing comprises modifying the presentation order of the individually matched educational content and corresponding educational activities based upon the learner performance data that was obtained and analyzed. In contrast, none of the cited references (alone or in combination) teach or suggest such limitations. Accordingly, for at least this reason, Applicant respectfully submits that the references cited in the Office Action, alone or in combination, do not teach or suggest all the claim limitations of independent base claims 50, 58 or 61. And, since the references cited in the Office Action do not teach or suggest each and every limitation of independent claims 50, 58 or 61, Applicant respectfully submits that the prior art references do not make obvious independent claims 50, 58 or 61. And since the prior art references do not make obvious independent claims 50, 58 or 61, Applicant respectfully submits that the prior art references cited in the Office Action do not make obvious the corresponding dependent claims, which depend from independent base claims 50, 58 or 61.
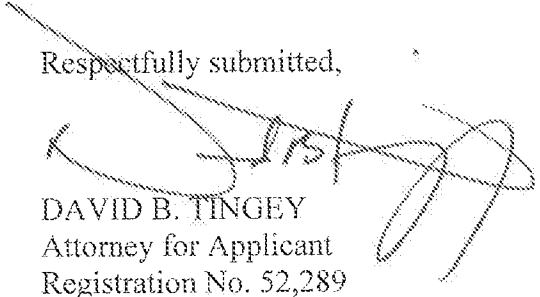
Thus, Applicant respectfully submits that for at least the reasons provided herein, the claim set as provided herein overcomes all rejections made in the Office Action.

CONCLUSION

Applicant submits that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicant requests favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this 12th day of October, 2009.

Respectfully submitted,

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